IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 321 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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STATE OF GUJARAT & 2 - Appellant(s)

Versus

CHAVDA BHARATKUMAR DEVJIBHAI - Respondent(s)

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Appearance :
MR. A.Y. KOGJE, AGP for Appellant(s) : 1 - 3.
None for Respondent. Office Report shows that Notice is served upon the Respondent.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 30/08/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The appellant-State and its Officers being aggrieved by Judgement/Order dated 31st August, 1989 passed in Special Civil Suit No.199 of 1989, directing appointment of an Arbitrator and

referring the matter to him for making an award is before this Court. It appears that the parties to the appeal entered into an agreement for certain construction works somewhere in the year 1984. The work was to be completed within the stipulated time, but, the same was not done. It appears that after some time, the plaintiff sought for an extension, which was granted in his favour, and as the plaintiff could not complete the work within the stipulated extended period, a Notice was issued to him in July-1987 that the contract stands terminated. The plaintiff, thereafter, filed an application under Section-20 of the Indian Arbitration Act, 1940 on 7th November, 1987 with a prayer to the Court that in accordance with Clause-52 of the agreement and as a dispute had arisen between the parties, the matter be referred to the Arbitrator. The application was not opposed on merits, but, in fact, it was conceded before the Court that a valid agreement to refer the matter to the Arbitrator does exist, but, the submission, in fact, was that the application filed under Section-20 of the Act was barred by limitation. The trial Court overruled the objection and directed appointment of an Arbitrator, therefore, the appellant-State is before this Court.

2. Learned Counsel for the appellants submits that as the work was to be completed in the year 1984, the cause of action would accrue in favour of the plaintiff in the year 1984 itself and, therefore, the application filed on 7th November, 1987 would be barred by limitation. It is also submitted that in view of Clause-48 of the agreement, on termination of the agreement, Clause-52, which relates to arbitration, shall also stand terminated and the application would not be maintainable.

3. It appears that it was submitted to the trial Court that there was no dispute about existence of the agreement and that there was no dispute also that a valid arbitration clause exists. If an extension was given to the plaintiff in the year 1987 and the contract was terminated somewhere in July-1987, then, the cause of action for referring the matter to the Arbitrator would accrue in favour of the plaintiff on termination of the agreement in July-1987. The submission on behalf of the appellants that the application was barred by limitation, does not appear to be correct. The contention is overruled.

4. So far as termination of the arbitration agreement is concerned, we must immediately reject the submission because on termination of the agreement, the power to refer the matter to the Arbitrator through the agency of the Court does not come to an end. The termination of an agreement itself may give a cause in favour of either party to refer the matter to the Arbitrator and if that be so, termination of the agreement would not arrest or nullify the operation of Clause-52 of the agreement, which otherwise is a valid piece of agreement.

5. We find no reason to interfere. The appeal is dismissed. Though we are dismissing the appeal on merits, but, we hereby direct the learned trial Court to observe the provisions of Section-21 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992. The trial Court shall secure attendance of the parties and within 15 days of the attendance of

the parties, shall refer the matter to the concerned Tribunal in accordance with Section-21 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992.

[***R.S.Garg, J.***]

[***K.M. Mehta, J.***]

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